

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

07/12/2002

CLERK OF THE COURT
FORM L000

HONORABLE MICHAEL D. JONES

P. M. Espinoza
Deputy

LC 2000-001395

FILED: _____

GEORGE FRANKLIN NELSON

ROY A OSBORN

v.

STATE OF ARIZONA

SAMUEL K LESLEY

PHX CITY MUNICIPAL COURT
REMAND DESK CR-CCC

MINUTE ENTRY

PHOENIX CITY COURT

Cit. No. 8966311

Charge: DUI

DOB: 04/05/54

DOC: 09/29/98

This Court has jurisdiction of this appeal by the State of Arizona pursuant to the Arizona Constitution Article VI, Section 16, and A.R.S. Section 12-124(A).

This case has been under advisement since without oral argument since its assignment on June 19, 2002. This decision

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is made within 30 days as required by Rule 9.8, Maricopa County Superior Court Local Rules of Practice. This Court has reviewed and considered the record of the proceedings from the Phoenix City Court, and the Memoranda submitted by counsel.

The only issue presented on appeal is whether the trial judge abused her discretion in granting a new trial on January 22, 2002. Generally, a trial judge has broad discretion in granting a new trial pursuant to Rules 24.1 and 24.2, Arizona Rules of Criminal Procedure. An appellate court will reverse this order only where a clear abuse of discretion appears from the record.¹

In this case, the trial judge explained her reasons for granting Appellee (Defendant's) Motion for New Trial:

The court having reviewed Defendant's motion and the State's motion...it appears the State's argument (is that) a prosecutor may argue a Defendant's failure to present exculpatory evidence so long as the argument does not comment upon the Defendant's silence. Defendant had an opportunity to obtain an independent chemical test; did not do so. Because the breath test was suppressed, the fact that he had an opportunity to obtain that independent chemical test, is not even relevant.

So, it's clear to the court that question was not to present, to comment upon the Defendant's failure to present exculpatory Evidence.

Well, based on the court's reading of the motion, the court's memory of the trial, and the statements made at that time, I am going

¹ See State v. Jones, 120 Ariz. 556, 587 P.2d 742 (1978).

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to grant the Motion for a New Trial.²

The trial judge's reasons for granting a new trial appeared within the grounds established by Rule 24.1(c)(2) and (5)³ and the record supports the trial judge's determinations. This Court finds no abuse of discretion.

IT IS THEREFORE ORDERED affirming the Phoenix City Court's order granting a new trial in this case.

IT IS FURTHER ORDERED remanding this matter back to the Phoenix City Court for all further and future proceedings in this case.

² R.T. of January 22, 2002, at pages 165-166.

³ Arizona Rules of Criminal Procedure.